

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

**In the Matter of**

**CTIA –THE WIRELESS ASSOCIATION**

**Petition for Rulemaking or, Alternatively a  
Waiver of the Closed Bidding Rules for  
C Block Licenses in the Broadband  
Personal  
Communications Services**

**WT Docket No. \_\_\_\_\_**

**RM-11019**

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**To: The Commission**

**COMMENTS OF  
BLOOSTON, MORDKOFKY, DICKENS, DUFFY & PRENDERGAST**

The Law Firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast (BloostonLaw), on behalf of its small business and rural telephone company clients, hereby submits the following comments on the July 8, 2004 Petition of CTIA – The Wireless Association (“CTIA”) to modify Rule Section 24.709. As discussed below, BloostonLaw opposes CTIA’s proposal to do away with entrepreneur eligibility restrictions for the Personal Communications Service (PCS) spectrum, since this mechanism is one of several tools that the Commission has used to help ensure the participation of small businesses and rural telephone companies in spectrum auctions. The Commission has indeed moved away from the use of eligibility restrictions in many non-PCS auctions, and this has for the most part been appropriate, since the most important factor in facilitating small business and rural telephone participation in auctions is the use of smaller licenses sizes (such as Metropolitan Statistical Areas, or MSAs, and Rural Service

Areas, or RSAs). However, the re-licensing of PCS spectrum in Auction No. 58 will involve larger license areas. In such instances, the use of eligibility restrictions to ensure small business/rural telco participation may be necessary. Therefore, the Commission should not eliminate eligibility restrictions by rule change, but instead should address CTIA's proposal in the context of its waiver request.

### **Statement of Interest**

BloostonLaw represents hundreds of rural telephone companies, and many other small businesses that need access to spectrum to provide valuable communications services to the public. The rural telephone companies in particular have encountered obstacles in obtaining the spectrum they need to bring wireless broadband and other services to rural America, as contemplated by Congress and the Commission. The difficulties encountered by these entities have recently been chronicled in the Commission's Rural Spectrum Access Rulemaking. *See Notice of Proposed Rulemaking*, WT Docket Nos. 02-381, 01-14 and 03-202, FCC 03-222, released Nov. 12, 2003. BloostonLaw clients have been active in both spectrum auctions and the rulemakings that determine the procedures for these auctions.

### **Eligibility Restrictions Are Still An Appropriate Tool For Certain Licenses.**

CTIA urges the Commission to eliminate the PCS eligibility restriction altogether, because it is "a vestige of a regulatory regime that the Commission has long abandoned." Petition at i. CTIA is correct that the Commission has adopted other measures, such as bid credit, partitioning and spectrum leasing rules to help smaller entities gain access to spectrum. However, bid credits will not determine the auction winner if a true small business or rural telephone company is bidding against a large, well-funded applicant. A company with deep

pockets will not decline to bid on available spectrum it wants simply because it will not be receiving a discount on the purchase price. The partitioning rules have thus far proven to be a disappointment, as larger licensees often do not want to create “holes” in their licenses via partitioning, and do not want to spend their resources negotiating what are viewed as minor deals. The spectrum leasing rules are too new to accurately determine their impact on spectrum access, but it is expected that these rules will at most accommodate niche situations. Therefore, while each of these measures constitutes a tool that is available for Commission use in encouraging small business/rural telco spectrum access, none of them is a panacea. Instead, history shows that perhaps the most significant factor in determining the auction success of true small businesses and rural telephone carriers is the size of the licenses being sold. In auctions in which smaller licenses have been available (such as RSAs), smaller entities have been quite successful in obtaining licenses, because they can bid on those license areas that can afford to pay for and construct. CTIA has supported the availability of smaller license sizes for at least one block of spectrum in most auctions. See CTIA December 29, 2003 Comments in WT 02-381 at p. 11 (“In the future, CTIA recommends that the Commission pursue such a balanced approach for new spectrum blocks and mix combinations of larger geographic service areas – such as Regional Economic Area Groupings (REAGs) – with some smaller geographic areas, such as Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs)”.)

Therefore, to the extent that the Commission commits to continuing the availability of small license sizes in future auctions, BloostonLaw agrees with CTIA that eligibility restrictions will become “a vestige of a regulatory regime that the Commission has long abandoned.” However, to the extent that larger license sizes are used in future auctions, eligibility restrictions may still be relevant. Because the PCS licenses to be sold in Auction No. 58 are not MSA/RSA-

sized licenses, it is not appropriate to simply eliminate the eligibility restriction of Rule Section 24.709 at this time. Instead, the Commission should consider whether the public interest is served by eliminating the eligibility restriction with regard to certain of the Auction No. 58 licenses, based on a consideration of several factors.

The PCS C Block has had a long and tortured history, and CTIA's interest in having open bidding on the remaining C Block licenses is understandable. Even though many of the Auction No. 58 licenses may not be viewed as realistic bidding targets for small and rural carriers (because they include large urban markets), there are still a number of smaller markets in the auction that will be of interest to rural carriers, such as Brainerd, Minnesota; Cookeville, Tennessee and Grand Forks, North Dakota. The Commission should assess whether the eligibility restriction of Rule Section 24.709 should remain in place for such markets, based on their size, location, and the level of small business/rural telco bidding on these licenses in Auction No. 35.

## **Conclusion**

Based on the foregoing, the Commission should not grant CTIA's request for a rulemaking to eliminate the PCS eligibility restrictions, and should retain eligibility restrictions in general as a potential tool for use in complying with the Congressional mandate to make spectrum available to small businesses and rural telephone companies. To the extent that the Commission considers CTIA's request for a waiver request with regard to Auction No. 58, it should retain the eligibility restriction with regard to small and rural licenses, at a minimum.

Respectfully Submitted,

By /s/ John A. Prendergast.  
John A. Prendergast  
Blooston, Mordkofsky, Dickens, Duffy & Prendergast  
2120 L Street, NW, Suite 300  
Washington, DC 20037  
(202) 659-0830

Dated: July 30, 2004

## **SERVICE LIST**

Chairman Michael K. Powell  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW – Room 8-B201  
Washington, DC 20554

Commissioner Kathleen Q. Abernathy  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW – Room 8-B115  
Washington, DC 20554

Commissioner Jonathan S. Adelstein  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW – Room 8-C302  
Washington, DC 20554

Commissioner Michael J. Copps  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW – Room 8-A302  
Washington, DC 20554

Commissioner Kevin J. Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW – Room 8-A204  
Washington, DC 20554

Bryan Tramont, Chief of Staff  
Office of Chairman Michael Powell  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW – Room 8-B201  
Washington, DC 20554

Cheryl Wilkerson, Legal Advisor  
Office of Chairman Michael Powell  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW – Room 8-B201  
Washington, DC 20554

Jennifer Manner, Senior Counsel  
Office of Commissioner Kathleen Q.  
Abernathy  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW – Room 8-B115  
Washington, DC 20554

Sam Feder, Legal Advisor  
Office of Commissioner Kevin J. Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW – Room 8-A204  
Washington, DC 20554

Paul Margie, Legal Advisor  
Office of Commissioner Michael J. Copps  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW – Room 8-A302  
Washington, DC 20554

Barry Ohlson, Senior Legal Advisor  
Office of Commissioner Jonathan S.  
Adelstein  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW – Room 8-C302  
Washington, DC 20554

John B. Muleta, Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW – Room 3-C252  
Washington, DC 20554

Peter Tenhula  
Acting Deputy Bureau Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW – Room 3-C254  
Washington, DC 20554

David Furth  
Associate Bureau Chief/Counsel  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW – Room 3-C217  
Washington, DC 20554

Lauren Patrich  
Legal Advisor for Media and Public Affairs  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Dr. Walter D. Strack  
Chief Economist  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

John Branscome  
Legal Advisor  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Margaret Wiener, Chief  
Auctions and Industry Analysis Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW – Room 4-A760  
Washington, DC 20554

Kathy Garland  
Deputy Division Chief  
Auctions and Spectrum Access Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554